

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**TERRANCE TURNER v. RICKY BELL, Warden**

**Appeal from the Criminal Court for Davidson County**  
**No. 97-A-49 J. Randall Wyatt, Jr., Judge**

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**No. M2006-01288-CCA-R3-HC - Filed November 21, 2006**

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This matter is before the Court upon the State's motion to affirm the judgment of the habeas court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The Petitioner has appealed the habeas court's order dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the habeas court was correct in dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**  
**Pursuant to Rule 20, Rule of the Court of Criminal Appeals**

ROBERT W. WEDEMAYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Terrance Turner, Nashville, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Lisa Naylor, Assistant District Attorney General; for the Appellee, State of Tennessee.

**MEMORANDUM OPINION**

The Petitioner is currently incarcerated serving two sentences of eight years at thirty percent for two convictions for attempted second degree murder, and twenty years at one-hundred percent for a conviction of especially aggravated kidnapping. The Petitioner has submitted this petition for a writ of habeas corpus claiming the trial court erred in applying an enhancement factor, abused its discretion in granting an "untimely filed notice of intent to seek consecutive sentences," and erred in not placing its reasons for arriving at its sentences in writing or giving them orally. At the habeas

court, the State argued the Petitioner did not establish either a void judgment or an expired sentence. Finding the State's motion well taken, the trial court summarily denied the petition.

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998) (citing State ex rel. Newsom v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1968)). A writ of habeas corpus may be granted only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 432 S.W.2d 656 (Tenn. 1968); State ex rel. Wade v. Norvell, 443 S.W.2d 839 (Tenn. Crim. App. 1969). The burden is on the Petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 381 S.W.2d 290, 291-91 (Tenn. 1964). A “habeas corpus petition may be dismissed without a hearing, and without the appointment of counsel for a hearing” if the petition does not allege facts showing the Petitioner is entitled to relief. State ex rel. Edmondson v. Henderson, 421 S.W.2d 635, 636 (Tenn. 1967) (citing State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964)).

Although an allegation that one was sentenced in clear violation of a statute may be grounds for habeas corpus relief, the Petitioner is incorrect that his sentence is in violation of the law. See McLaney v. Bell, 59 S.W.3d 90 (Tenn. 2001). The Petitioner's sentence was determined by this Court on direct appeal to be legal. State v. Turner, 41 S.W.3d 663, 674-75 (Tenn. Crim. App. 2000). The Petitioner's first ground for habeas corpus relief has no merit.

The Petitioner's second and third grounds for relief, abuse of discretion in allowing an “untimely notice,” and failure to state reasons for a sentence, both fail to allege a lack of jurisdiction or a void conviction. Neither of these allegations would make the judgment facially invalid, even if true. See Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). At most, these allegations would make the conviction voidable and are therefore not cognizable grounds for habeas corpus relief.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the Petitioner has not established that he is entitled to habeas corpus relief based on a void judgment. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance to Rule 20, Rule of the Court of Criminal Appeals.

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ROBERT W. WEDEMEYER, JUDGE